

**City of Lafayette
Public Meeting Minutes
City Council Regular Meeting**

MINUTES

**Lafayette Community Center -- Sequoia Room
500 St. Mary's Road, Lafayette, California**

**December 10, 2007
6:30 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 6:30 p.m.

2. ROLL CALL

Present: City Council: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson and Anduri

Absent: Councilmember Federighi

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Manager; Mala Subramanian, City Attorney

3. ADOPTION OF AGENDA

ACTION: It was M/S/CTatzin/Andersson) to adopt the agenda. Vote:4-0-1 (Ayes Anderson, Tatzin, Andersson, Anduri; Noes: None; Absent: Federighi).

4. PUBLIC COMMENTS – None

5. CLOSED SESSION

- A. Conference with Legal Counsel - Anticipated Litigation**
Government Code section 54956.9(b) - Significant exposure to litigation (1 potential case)
- B. Conference with Legal Counsel - Anticipated Litigation**
Government Code section 54956.9(c) - Initiation of Litigation (1 potential case)
- C. Conference with Real Property Negotiators -**
Government Code section 54956.8 -- Property: 881 and 889 Moraga Road, 3530 Herman Road and one unaddressed parcel APN 241-210-027, Lafayette , CA
Negotiator: Steven Falk, City Manager
Negotiating Parties: Tom Titmus and Douglas McCleod
Under Negotiation: Price and Terms of Payment
- D. Conference with Labor Negotiators**
Government Code Section 54957.6
City designated representative, Steven Falk, City Manager
Unrepresented employees: City employees

6. ADJOURNMENT

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the meeting at 7:05 p.m. to the regular City Council meeting. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Anduri: Noes: None; Absent: Federighi).

APPROVED:

Mike Anderson, Mayor

ATTEST:

Joanne Robbins, City Clerk

**City of Lafayette
Public Meeting Minutes
City Council Regular Meeting**

MINUTES

**Lafayette Community Center - Manzanita Room
500 St. Mary's Road, Lafayette, California**

**December 10, 2007
7:00 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 7:07 p.m.

2. ROLL CALL

Present: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson and Anduri

Absent: Councilmember Federighi

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Mala Subramanian City Attorney; Tony Coe, Engineering Services Manager, Leah Greenblat, Transportation Planner; Joanne Robbins, City Clerk; Lisa Harper, Minute-Taker

3. PLEDGE OF ALLEGIANCE – led by Mayor Anderson

4. ADOPTION OF AGENDA

Vice Mayor Tatzin requested moving Items 11C and 12A to be heard prior to public comment. Councilmember Anduri requested, and Vice Mayor Tatzin agreed, to hear both items after Item 6A, as Items 6B and 6C.

ACTION: It was M/S/C (Tatzin/Andersson) to adopt the agenda, as amended. Vote:4-0-1 (Ayes: Tatzin, Andersson, Anderson, Anduri; Noes: None; Absent: Federighi).

REPORT ON CLOSED SESSION

- A. Conference with Legal Counsel - Anticipated Litigation
Government Code section 54956.9(b) - Significant exposure to litigation (1 potential case)**
- B. Conference with Legal Counsel - Anticipated Litigation
Government Code section 54956.9(c) - Initiation of Litigation (1 potential case)**
- C. Conference with Real Property Negotiators -
Government Code section 54956.8 -- Property: 881 and 889 Moraga Road, 3530 Herman Road and one unaddressed parcel APN 241-210-027,**

Lafayette , CA
Negotiator: Steven Falk, City Manager
Negotiating Parties: Tom Titmus and Douglas McCleod
Under Negotiation: Price and Terms of Payment

- D. Conference with Labor Negotiators**
Government Code Section 54957.6
City designated representative, Steven Falk, City Manager
Unrepresented employees: City employees

Mayor Anderson reported the Council gave direction to the City Attorney in Closed Session.

5. PUBLIC COMMENTS - None

6. PRESENTATIONS

- A. Richard Haygood, President of the Institute of Traffic Engineers, San Francisco Bay Area Section -- Special Commendation for the City of Lafayette's Bikeways Master Plan for its innovative approach promoting bicycle usage in a fiscally challenged and roadway capacity constrained environment.**

Recommendation: Receive and file.

RICHARD HAYGOOD, President of the Institute of Traffic Engineers, San Francisco Bay Area Section, discussed the Institute's history and purpose, membership and award program. He said the 2007 award winning project involved the traffic control of the MacArthur Maze project, discussed innovative approaches, challenges and public acceptance, and said the selection panel also recognized Lafayette for its Bikeways Master Plan by awarding a special commendation. The award is based on Lafayette being a small city, its regional location to BART, attraction to bicyclists, terrain challenges and the City's fiscal and staffing issues. While the plan was developed in 2006, it provides convenient biking in the City, he truly appreciates being able to ride throughout the City as a resident, and said "Share the Pavement" markings will soon be placed on Mt. Diablo Boulevard to enable lane sharing where there is no marked bike lane. There will also be alternative routes designated in order to travel through various neighborhoods.

Mr. Haygood commended Transportation Planner Leah Greenblat and presented the City Council with a certificate of commendation from the Institute.

Mayor Anderson recognized Bicycle Advisory Commission President Bart Carr also in the audience along with Ms. Greenblat and he thanked all staff and volunteers for their work on the Bikeways Master Plan. Councilmember Andersson said the City might have a good future in being recipients of additional awards, as it has many other fiscally challenging projects. Councilmember Anduri said there was a nice newspaper article that recognized the work done by Ms. Greenblat and City staff, noted the Town of Moraga utilized Lafayette's traffic calming program in preparation and adoption of its final plan, and he congratulated Ms. Greenblat and City staff.

- B. Letter dated October 25, 2007 from Samuel Holmes regarding litigation concerning proposed access between Palo Alto Drive and an undeveloped parcel known as Lot 15 owned by James and Nanna Busby.**

Recommendation: Discuss and direct staff..

- C. Letter dated October 25, 2007 from Samuel Holmes regarding litigation concerning proposed access from Palo Alto Drive through a 0.12 acre parcel (APN 244-022-005) to a contiguous existing 9.25-acre vacant parcel (APN 244-300-001) owned by James and Nanna Busby.**

Recommendation: Discuss and direct staff..

SAMUEL HOLMES, Lafayette resident and attorney, requested the Council enforce a contract which it entered into with a developer 40 years ago which is currently under attack. He said there was a large tract of land on the south side of Palo Alto Drive to the Toledo Drive area. The development took place on Palo Alto Drive and then there was a development on top of the hill which is now Quail Ridge, leaving an area between the two which connected to the portion of Toledo Drive area, owned at the time by one person.

Residents moved into the new houses and the area at the top was then sold and developed as houses called Quail Ridge. At that time, a drain was put in down through a 20-foot strip of land between the last lot on Palo Alto Drive and the property facing Cambridge. The area under question is the 20-foot strip between Lot 6 on Palo Alto Drive and the back portion of the property facing Cambridge.

When Palo Alto Drive was developed, the land was owned and sold to Security Owners Corporation, a corporation which Mr. Busby controlled. There was a desire to develop Toledo Drive, an application was made for permits and in the course of discussions and hearings before the Planning Commission the question arose as to what effect this would have on Palo Alto Drive. Mr. Busby, or Security Owners Corporation, proposed there be no access from the portion left above the Palo Alto Drive properties and Palo Alto Drive. At that time, Lot 15 did connect directly to the area developed as Toledo Drive before there was a sale of the Toledo Drive area. There was an access from Lot 15 directly to Palo Alto Drive, 40-feet wide and it ran directly from the boundary between the lots on Palo Alto Drive called Lots 2 and 3 to Lot 15.

Prior to the application for Toledo Drive, it was offered and accepted by the Planning Commission that the section be conveyed to the City, removing it from Lot 15 as an access. In due time, the matter was resolved by a series of conditions by the Planning Commission with full agreement by Mr. Busby. Among the conditions, he was concerned with Conditions 7 and 8. Condition 7 stated there would be no access to Palo Alto Drive. Then a tentative map was produced and heard by the Council in 1976. There was no appeal by Mr. Busby by the decision of the Planning Commission and he agreed to it. The matter was heard by the Council and they adopted the conditions determined by the Planning Commission. Then, a final map was filed and the matter rested for many years.

The 20-foot strip put in for a drain is still there and is used for drainage of the hillside and Lot 15. However, last year Mr. Busby entered into agreements with residents of Lafayette; (Winther and Gold), to sell Lot 15 and the 20-foot parcel, which is owned by Security Owners Corporation. Lot 15 is also owned by Mr. Busby so there are two separate ownerships, but the application was made to the Planning Commission for use

of the 20-foot strip as the access to Lot 15 which is in direct violation of the agreement made 40 years ago. Residents came to the Planning Commission meeting when the application was heard, they opposed it, the Planning Commission refused to act on it having no jurisdiction, and there was no appeal to the City Council.

A lawsuit was then filed against Richard Holmes, Lot 6, who he said is his brother. There was a claim he was interfering with the use of the strip by the owner. The owner has paid taxes on it but never used it in the 40 years. Richard Holmes has taken care of the property in fire protection and weed removal and has also used the property for a garden. In the application to the Planning Commission, the applicants, Worther and Gold, relied on a report prepared by staff. Mr. Holmes said he reviewed the report, sent a 10-page analysis to the City Attorney pointing out what he feels are errors and omissions of fact because the point was made in the report that because the agreement that there would be no access to Palo Alto Drive was not stated in the final map, it was no longer applicable. He said he could find nothing that a final map must contain the conditions issued by a Planning Commission, and he felt the purpose of the final map is to serve the needs of the County for ownership and tax purposes.

The agreement by Mr. Busby for no access was a consideration which he made in order to get the approval of the Toledo Drive project. It was conditioned and exchanged for the permit to build 14 houses for which he gave up one or two possible houses in Lot 15. He received consideration for his promise. After the final map was filed, it was found that Condition 8 had not been performed by Mr. Busby, which was his agreement that he would convey the original 40-foot strip to the City. After a year had passed, staff wrote Mr. Busby a letter and indicated he had promised to convey the property after which a threat of lawsuit was made. Mr. Busby then complied, the City did not want it and had it conveyed half and half to the property owners. He felt there could be no question of the final map and he felt it had no relevance.

Mr. Holmes noted the existence of a current lawsuit pending against Richard Holmes and he, in turn, has filed a cross complaint. He said in 1976, property owners opposed the Toledo Drive project entirely until Mr. Busby indicated he did not want access to Palo Alto Drive. Because of this, the property owners withdrew their opposition and the matter was adopted by the Planning Commission and City Council. Therefore, the property owners were intended as the original beneficiaries. In the cross complaint, he is seeking to enforce the contract. The court might question where the City is and he therefore requested the City to join in the lawsuit voluntarily because it is the obvious party to the contract. He could bring the City in as an additional cross defendant and he could represent the City without cost. However, a court would wonder why the City is not on board. If the City does not want to do this, they will be forced to amend the cross complaint and bring in the City against its will. If the City should come in on its own independently, it would undertake the risk of paying its own attorney fees, as the costs cannot be passed onto the developer because of its opposing interests.

Mr. Holmes said the other way to handle the matter is for the property owners to force the City to enforce its own contract because it is for the benefit of the City. If the City should give up its contract rights, it is giving away City interests for free and not entitled to do so. Mr. Holmes said they are trying to preserve what the Council determined 40 years ago--preserve the absence of any access to Lot 15 to Palo Alto Drive. His point is that Mr. Busby gave up very little and got the permission to develop 14 lots. They want the City to enforce its contract and those intending to benefit from the contract.

PUBLIC COMMENTS:

RICHARD F. HOLMES, (brother living at 3841 Palo Alto Drive), said he spent 9.5 years on the Council and learned to respect the abilities it takes to serve effectively on the Planning Commission and Council. He said the Planning Commission investigated the subdivision for over a year. Mr. Busby, the owner, offered to exchange the approval of 14 expensive lots for the limitation on Lot 15. He also offered that there would be no access to Lot 15 from Palo Alto Drive and this condition was accepted by the Planning Commission and City Council. The Planning Commission approved a long set of conditions, the Palo Alto Drive owners accepted their decision and over 30 years later, Mr. Busby now wants the strip to be an access route to Lot 15. He asked the Council to decide if these decisions are thoughtfully prepared and legally applicable to the problems and conditions brought before the Council. He asked the Council to confirm its previous decision to withdraw the letter which allows the access to Lot 15.

KATHY MERCHANT, 3815 Palo Alto Drive, said through her work with the new library she has learned that the guiding principle for the City Council, staff and Commissioners is transparency. She spoke of its definition and said it is true today as it was in 1976 when Mr. Busby presented the Council and Planning Commission to develop what is now Toledo Drive. She said transparency is a value everyone holds dearly in Lafayette and said the public transparent record of decisions regarding Condition 7 is as follows: On April 29, 1976 the Planning Commission approves Conditions 7 and 8. Mr. Busby agrees multiple times in the minutes that he "was willing to stipulate that no building permit would be applied for on Lot 15 until access was obtained off Cambridge." Mr. Busby and his attorney had the option of negotiating with Mr. Sandler prior to accepting Condition 7 and they chose not to do so. Four days later on May 6, 1976, the Assistant Planning Director wrote to Mr. Busby and attached a list of 40 conditions, including Condition 7. Ten months later on February 24, 1977, Planning Director Lyons signed on the final map. One week later on March 7, 1977, Mr. Busby's attorney, Robert Sterling, writes a letter to the Planning Director stating, "It is my position that the City of Lafayette through Condition 7 of its approval of Subdivision 4747 has eliminated the possibility of access to Lot 15. He then suggests the City sue the Sandler's for a portion of their private property." Ten months after the Council approved the Toledo development Subdivision 4747, Mr. Busby and his attorney contend that Condition 7 is in fact a legal condition of approval for Subdivision 4747 and a basis for suing the Sandler's for Mr. Busby's benefit. Five days later, Mr. Busby signed a subdivision performance bond stating he shall "keep and perform the covenants, conditions and provisions according to their true intent." Five days previous to this, Mr. Busby's attorney stated Condition 7 is a legal fact. One week later, Mr. Busby signs the final map. On March 22nd, the Planning Director and Charles Williams, (former) City Attorney, writes a letter to Mr. Busby's attorney stating, "Condition 7 is the condition of approval of Subdivision 4747. It indicates the owner of Lot 15 voluntarily accepted the restrictions imposed on access." So, she said now the City Attorney also confirms that Condition 7 is a condition of record. She knows it is awkward for a City Council to overrule a City Attorney, but she questioned what is the legal evidence that anything has changed since City Attorney Williams made this ruling at the time of the Toledo development. She recognized cities and courts do not like to land lock private property and this is a premise with which she fully agrees, but when a developer voluntarily gives up access to one property in order to make huge financial gains on another substantial development, this is a personal and

financial choice he has made with legal counsel. Mr. Busby saw Toledo as a good trade-off to telling neighbors who had strong reservations about the Toledo development that he would concede access off Palo Alto Drive. He cannot renege 30 years later because he sees a chance to make another dollar. From her perspective, this is a question of public integrity by the City Council not to mention Mr. Busby. It is a question of transparency. When subsequent City Attorneys can overrule the legal ruling of a previous attorney without any change of circumstances from the original ruling, land planning and development would be utter chaos. A developer cannot back out 30 years later of a publicly and legally approved agreement just because a chance to make more money appears. Mr. Busby had his chance to declare Lot 0 as access as part of the proceedings and he did not, most likely because this was considered a drainage strip. Mr. Holmes and Thomas have spent thousands of dollars maintaining the drainage and weed abatement on this property because Mr. Busby neglected to do so. He may have paid taxes on the property, but he did not make his legal commitment to maintain the drainage and fire responsibilities. She asked the Council to honor the commitment the City Council made to Mr. Holmes and Mr. Thomas and to her neighborhood in the 1970's. Nothing has changed--only the City Attorney and City Council. From her perspective, this is not only a legal obligation but it is the only honorable, ethical and legal decision.

KEITH THOMAS, said he lives at 3853 Palo Alto Drive and his property immediately adjoins Lot 0 and the strip runs between Mr. Holmes and his home. He and his family has lived in the house for 17 years and his parents 20 years before that. He said until this situation surfaced last year he had always been under the impression that the drain was an EBMUD drain. He was not aware it was a parcel owned by Mr. Busby and for 37 years his family has taken care of the maintenance strip. Every year, it fills up with dirt and they pay their gardeners to dig it out. By making use of what was intended as a sewer/drainage maintenance strip and turn it now into an access point for a hillside lot he felt is very disturbing and upsetting. The fact there was access on Cambridge which could have been negotiated with Mr. Busby and he chose not to do it is now resulting in penalization to all of them. He said there were many other issues; there is a contract that all neighbors understood was in their best interest which allowed Toledo to go in, and only to find now there is a potential opportunity for them to get in is unacceptable to the Council and to them, and he hoped the Council will reverse the opinion.

Mayor Anderson said it would be appropriate to have the City Attorney speak with Mr. Holmes separately and then return to the Council with the result of that discussion.

Vice Mayor Tatzin questioned and confirmed with City Attorney Subramanian that there is nothing that would prohibit Mr. Busby or the related company to comply with Condition 7 at this time. Vice Mayor Tatzin also confirmed that the document prepared for the Planning Commission is a current public record. He asked if the position in that document regarding access was ever adopted by the Planning Commission or City Council, and City Attorney Subramanian said no, it was not. He questioned what its status was as a document, and City Attorney Subramanian said functionally it is a public memo prepared by staff and it reflects staff's opinion and not the City Council's nor the Planning Commission's opinions.

ACTION: It was M/S/C (Tatzin/Anduri) to request the City Attorney enter into discussions with Mr. Sandler and Mr. Holmes and report back to the Council at the January 14, 2008

meeting with an update. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

7. OLD BUSINESS

A. Niroop Srivatsa, Planning & Building Services Manager

Appeal of the 2007 Regional Housing Needs Allocation: Appeal of the draft housing allocations assigned by the Association of Bay Area Governments (ABAG) to Lafayette for the period 2007-2014 which are: 113 very-low income, 77 low-income, 80 moderate income and 91 above-moderate income units for a total allocation of 361 units.

Recommendation: Consider authorizing the Mayor to file an appeal with the ABAG Board regarding the RHNA numbers for Lafayette.

Planning and Building Services Manager Srivatsa said before the Council is a staff report and suggestion by staff that the Council consider appealing the ABAG Board's approval of the regional housing needs allocation (RHNA) numbers for Lafayette. The report contains a breakdown of the RHNA allocation by income type and they have an obligation over the next seven years to have programs in place that will facilitate construction of 361 dwelling units. The City has until January 16, 2008 to file the appeal which would preserve the City's right to litigate in the future. She said the process is for the City to submit a letter to the ABAG Board by the January 16th deadline citing specific technical reasons why a revision or reduction should occur. She offered staff's views on this point, stating over the last year, Lafayette has submitted a number of letters to the ABAG Board's Housing Methodology Committee, requesting it reconsider the allocations in terms of the overall number and distribution by income type. Staff has cited topographical, economic and infrastructure constraints that make it extremely difficult to meet those numbers. Every step of the way ABAG staff and Board has accepted their letters, but has not changed the numbers. Given this, it is staff's opinion that appealing the decision will not cause a reduction or change in distribution by income type.

Ms. Srivatsa said she also polled planners from Contra Costa County last week. Of the 19 jurisdictions, less than 6 submitted comments like Lafayette had to ABAG. None of them are going to appeal the RHNA numbers and if Lafayette chooses to do so it will probably be the only jurisdiction in the County.

Regarding pro's and con's of filing an appeal, it will provide the City's right to litigation if chosen in the future, but in staff's opinion there is no new technical information we can submit to ABAG which would cause them to revise the numbers.

Vice Mayor Tatzin said the one thing that has changed is that the housing market is going in a different direction. There are lots of vacant homes in the Central Valley, there are increasing foreclosures in eastern Contra Costa County, and there is widespread speculation that the construction of housing will be depressed for several years. ABAG has provided a number by the State Department of Finance, but when that number came down, the housing market was not what it is today. He wondered if this should be raised as a new issue that has arisen since the process began, and for the 2007-2014 period there is likely to be an impact on the ability of the entire region to build homes. Ms. Srivatsa said it sounds like a reason for ABAG to look at its overall allocations, however, ABAG receives its numbers from the State and the State must look at its overall numbers throughout California.

Councilmember Anduri said he had not seen the requirement that these are new technical reasons and Ms. Srivatsa said he was correct; they are technical reasons and staff has offered those reasons before and have been turned down.

Councilmember Anduri said he would be interested in what the costs are to appeal. Unless there is a significant cost, he would be in favor of appealing to preserve the right to litigate and he would cite what the City has given them in the past because it had apparently not been discussed; there has been no public indication that anyone has read the City's submissions. He would also use Vice Mayor Tatzin's points as a background, but he would not make that the special appeal but to consider it in light of the changing economics.

Ms. Srivatsa said she did not know what the cost of appeal is and staff can investigate this. There is one Council meeting between January 16, 2008 and it could be as simple as sending a letter or it may require more staff analysis.

City Manager Falk said there may be additional costs to simply appeal and its processes. He said ABAG is instrumental in the allocation of parks grants, housing grants, urban development grants, and there may be costs associated with antagonizing ABAG that the Council may wish to calculate.

Councilmember Andersson said he has seen the letters and responses in the past from ABAG. He questioned if it was staff's expectation that a formal appeal process would be significantly different or would it garner the same attitude. Ms. Srivatsa said ABAG has indicated they will establish a Special Committee to hear appeals filed by the deadline. She can pursue this more and get more details, but in her opinion it will be representatives from ABAG making the final recommendation to the Board and the Board will decide on the matter. She noted that Diana Elrod, the City's housing consultant, said one of the repercussions of filing an appeal is that if the City is successful, its numbers removed from Lafayette will be assigned to another jurisdiction and other cities will not be pleased to receive Lafayette's numbers.

PUBLIC COMMENTS:

LYNN HIDEN reiterated her concerns about grid-locking the downtown for various reasons of safety, damaging fiscal stability in the downtown and she is more interested in that rather than the welfare of the other cities and their opinions. She said Lafayette's topography and infrastructure is unique in the County and Bay Area. She does not feel it matters whether the City wins the appeal, but that it has appealed and that it protects our options to litigate. She and former City Attorney Charlie Williams used to play "what if" and it was his opinion that the City may have to someday sue ABAG. She hopes this does not occur, to litigate over the methodology given the fact ABAG could stack numbers on Lafayette or Moraga that we are potentially harmed in the future. Therefore, she asked the Council to preserve the option and create the appeal.

Mayor Anderson questioned whether continuing the appeal process keeps the City open to litigate this particular set of numbers or was it important to continue so that they have the option to litigate in the future. City Attorney Subramanian said the appeal was only for this cycle.

Councilmember Andersson said it seems to him that given ABAG's response to this point, there is not much expectation of success. He does not know what successes in litigation would be, but he was more concerned that ABAG evaluate the process they went through to come up with the methodology itself before the next round. He thinks among various objections, the scheme they came up with is not only bad for Lafayette but for others in providing housing. The key thing for him is to make sure the City has done everything it can to make them aware of our objections to the methodology and process so the next time an earlier start can be taken to have them look at that approach. He did not think appealing or litigating would have any effect or be beneficial, given the fact that the process was not straight-forward.

Vice Mayor Tatzin said as Ms. Elrod pointed out that no other City would want Lafayette's numbers and the same would occur with the opposite situation. He suggested asking staff to remain in touch with ABAG staff to find out how many appeals are coming in, to draft an appeal letter ready for the January 14th meeting, and if there are a lot of appeals, the City might want to send ours. But, if we are the only appealing City, then we might not want to. He suggested continuing the item and asked staff to report back.

Councilmember Anduri said in looking at it from someone being not that familiar with ABAG, he said he would want to make the City's case, have a record that we are not happy with what they did this year. We would not want there ever to be some feeling at ABAG that we must have ultimately been happy with it because we did not appeal. He said unless staff reports back that there is a huge cost to the appeal, he would support appealing but said he is willing to wait until January 14th to make that decision.

Mayor Anderson said he is concerned that the appeal might end up being a problem for the City more than a benefit. He asked if the City can accommodate the numbers it is being assigned in the general plan or would the general plan have to be amended. Ms. Srivatsa said the City can accommodate 361 units. The current Housing Element has an inventory of underdeveloped sites in the downtown which can accommodate slightly over 400 units and Lafayette used this to have its Housing Element certified. Where there is some concern is whether the City will be able to produce the very low and low income units, even given the fact the City has a Redevelopment Agency and we are considering the inclusionary housing ordinance.

Mayor Anderson confirmed with Ms. Srivatsa that the much more affluent cities were given higher percentages of low and very low income housing units they must achieve across the board. He said it would be useful to know if ABAG was receiving any appeals from similar affluent communities, but he felt it would not be good for Lafayette to be the only appeal and would want to start working with other cities that are appealing in the next cycle so we have a leveraged group in the process.

Councilmember Anduri questioned if an alternative to appeal would be to have staff draft an alternative letter that acknowledges ABAG has not read the City's letters, that we do not believe it is worth appealing, but we will send another letter to be on record. Vice Mayor Tatzin suggested this could be discussed at the January 14th meeting.

ACTION: It was M/S/C (Tatzin/Andersson) to ask staff to prepare the basis for an appeal letter, to remain in contact with ABAG staff between now and the next meeting and

report to the Council what cities are appealing, identify the cost of the appeal, and that the matter and decision be continued to January 14, 2008. Vote: 4-0-1 (Federighi absent).

A. Ann Merideth, Community Development Director

Residential fences with-in the public right-of-way

Recommendation: Select Option 4 to maintain the current City practice.

Community Development Director Ann Merideth said at a November meeting the Council discussed two encroachment permit requests involving fencing and expressed concern about solid fencing and their visual and safety impacts on residential streets. Staff offered to bring back information and options. Staff looked at a number of cities in terms of what they do for fencing within the right-of-way and also fencing in general, since it appeared that most cities tie back their fencing within the right-of-way and encroachment process to what their standards are for residential fencing. Unlike most cities, Lafayette does not have specific fencing standards in terms of materials or heights within certain distance of corners, or front yard fencing in terms of aesthetics or traffic safety.

Staff discussed the matter, options and developed four options in the staff report; 1) to consider requests for fencing in the public right-of-way a maximum of 3 feet; 2) to allow fencing up to 6 feet within public right-of-way, but only allow the lower one-third to be solid; 3) to not to allow fencing at all from this point on in the public right-of-way. While this option may seem like an easy solution, it could be a code enforcement problem and constant drain on resources, and staff was not sure what the value would be as they would continue to allow pillars, gates and mailboxes. Option 4 would continue the City's current practice of evaluating fences on a case-by-case basis. She said because of Lafayette's topography and uniqueness of neighborhoods, there is no real standard subdivision and this option is probably the best way to approach each situation, evaluate them and continue to take into consideration of aesthetics and traffic safety.

Ms. Merideth said the entire fencing issue was considered as part of the Planning Services Work Plan, something the Design Review Commission would like to tackle at some point, and both independently and as part of the residential review guidelines that have continued to be on the Work Plan. In the last consideration of the Work Plan by the Council, this was a deferred task. If the Council were interested in revisiting this, it would do so in January or February 2008. Given this information, Planning and Engineering staff recommends Option 4 to maintain the current practice.

Councilmember Andersson said with Option 4 the first three options included adopting a policy of what is allowed and what is not. Option 4 does not and it recommends review on a case-by-case basis, and he asked what are the criteria used by Planning staff to evaluate them. Ms. Merideth said for new requests, staff reviews it in terms of aesthetics with a primary concern for traffic safety, line of sight, impacts to protected trees, and others.

Councilmember Andersson asked if there was an underlying policy regarding placement of fences in the public right-of-way when it could be placed on the property line, and Ms. Merideth said there was not.

Mayor Anderson said the recommendation is to maintain the City's current practice. It would seem useful for staff to begin to put together some criteria for decisions as each situation is evaluated which could happen for the 2008 Work Plan. Ms. Merideth said it would be difficult to start thinking about standards for fencing within the right-of-way because a fencing policy would need to be created for all residential fences that will work in both situations. She referred to fencing of wrought iron which is open, it meets the criteria to not creating a wall effect on a residential street, it allows for visibility for traffic, but she questioned if it is the correct material, especially in rural areas. She felt it opens up a different set of questions in terms of what is appropriate fencing in Lafayette's neighborhoods, and she said most cities have residential fencing standards.

Councilmember Anduri confirmed with Ms. Merideth that currently the City's practice is that if someone comes with a new application and they want to do landscaping in the public right-of-way, staff evaluates it for aesthetic concerns, traffic safety concerns, and secures a recordable agreement from them that if the City needs to take the right-of-way they agree to give up improvements in the right-of-way.

Vice Mayor Tatzin said as the member who removed the last two items from the Consent Calendar regarding the fences in the right-of-way, he was happy with Option 4. His personal preference would be not to approve opaque fencing in the right-of-way for visual and traffic safety concerns as he did not like residents installing them on public lands. He said he would continue to remove them from the Consent Calendar in the future, if proposed. Ms. Merideth said when the requests come to the Council; staff can explain the rationale behind the request for a solid fence.

Councilmember Anduri said the problem in November's two examples was coming up with a consistent approach because there are many different situations the Council must review. Ms. Merideth said one example was a retroactive request but the other request had not yet been installed and the owners actually withdrew their request.

Councilmember Andersson said he supported Option 4 assuming there is a more comprehensive look at it in the 2008 Work Plan. Ms. Merideth said the item will show up as a task and the Council could assign its priority at that time.

Councilmember Anduri thanked staff for reviewing the matter. He asked whether or not people who are agendized for the Consent Calendar feel the Council is making inconsistent decisions.

Ms. Merideth said they generally question why they must go through the process when their neighbors have similar situations and did not have to go through it.

ACTION: It was M/S/C (Tatzin/Andersson) to select Option 4 to maintain the current City practice. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Anduri; Noes: None; Absent: Federighi).

8. STAFF REPORTS

A. Tracy Robinson, Administrative Services Director

1. John Cropper, Cropper Accountancy Corp.

Audit Presentation

Recommendation: Receive and file.

BRUCE CROPPER, Cropper Accountancy Corporation, said they met with staff and with representatives of the ad-hoc committee last Friday and went over the report. Subsequent to that time, there were some changes and typographical errors and he distributed an updated report to the Council.

Mr. Cropper reviewed the report, stating it consists of a management analysis of the last three years, balance sheet and income statement and it is followed by their report that has them both on a gap and governmental basis and it is followed by 25-30 pages of footnotes. As the management's discussion points out, there was an excess of revenues over expenditures in the \$3.5 million range. There is a considerable breakdown of funds the City has following that. He highlighted the footnotes, stating on pages 23 and 24 identifies cash and investments. The City has in its bank accounts \$3 million, \$15.5 million in its LAIF fund, there is about \$6.8 million in mutual funds, and \$11.8 million worth of investment and U.S. Treasury and federal agency bonds. On page 24 there is a classification of those bonds and ratings of AAA, and the breakdown totals in cash and investments of approximately \$37 million, which is split between LAIF, investments and bonds and cash.

On page 27 are the capital assets which used to be called fixed assets. There is \$112 million, less cumulated appreciation of \$48 million, for a net of about \$64.5 million in fixed assets, which by far is the greatest asset in the balance sheet. Most of this is infrastructure (\$88 million) which is now reported, less depreciation of this of approximately \$46 million.

Pages 28, 29 and 30 break down the debt the City has. Half is Redevelopment and other half is in General Obligation. In the past years, the Agency has taken on more and more of the efforts of the City and a very material part of those efforts include the Library and the Veterans Memorial Hall.

The next item is Restrictions on page 31. Some of the assets are set aside, such as \$2.5 million set aside for debt service. These are restricted funds by provisions of the debt to take care of interest and amounts paid in any particular year. The other restricted area is the low/moderate income housing. 20% of revenues that come in from the State in Redevelopment are set aside for low/moderate income housing, which totals about \$2.3 million.

Pages 32 and 33 discuss retirement plans for employees of the City. The City does not participate in PERS but does in 401 and 457 plans. The last area is on page 37; a comparison of revenue versus budget for the general fund and the expenditure versus the budget. He said they have delivered what they consider a final report minus the typographical errors and minor corrections.

Vice Mayor Tatzin said he was a member of the Finance Subcommittee and met with the auditors last week. He thinks the City is in good shape and recommended receiving it, given the minor changes.

JOHN CROPPER, Cropper Accountancy Corporation, said largely changes were in the NB&A, there was one minor typographical error they correct. There was also a date change in the SAVS 114 letter written to the Council. He said it deserves mention that there was no Management Letter issued this year. There were no reportable deficiencies, they felt there were comments that needed to be made which were made in the letter provided to the Council having to do with GASB 45 and other minor comments, but a management letter was not needed. He said this was the first time they had never issued a management letter to a City, and he commended the City's Finance Director, Gonzalo Silva.

City Manager Falk commended Mr. Silva and his Finance staff for their exceptional work. He said Mr. Silva has been with the City for 17 years and has addressed weaknesses and problems year after year, which resulted in none for this year.

ACTION: It was M/S/C (Tatzin/Anduri) to receive the 2006/2007 Auditor's Report. Vote: 4-0-1 Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

2. Adopting the Final Municipal Budget/Workplan for Fiscal Year 2007/2008

Recommendation: Receive the Final Municipal Budget/Workplan for Fiscal Year 2007/2008 and adopt Resolution 2007-50.

Administrative Services Director Tracy Robinson summarized what is included in the City Manager's memo for the 2007/08 Final Municipal Budget and Workplan. She noted there were some typographical errors and said there were a couple of additions to the report. The first is that in the first paragraph, for FY 2006/07, the expenditures were \$1.3 million less than budgeted while revenues were \$2.2 million more than expected. The sources of those savings and additional revenue are outlined in the letter in the staff report.

Regarding additions to this budget were previously approved changes the Council made in May when looking at the proposed plan; 1) to postpone the analysis of the infrastructure updates to the Community Center; 2) allocate an additional \$200,000 for the Eden Senior Housing Project; 3) allocate \$1800 to purchase City flags; and 4) allocate an additional \$590,000 in general fund monies to the Pavement Management Program. She said all of these changes are reflected in this budget. She said there were also additions added to the budget that came up during the last six months; 1) they added \$87,000 to the Council budget to pay for the June Special Election; 2) they added \$8,000 to the bond debt funds to pay for arbitrage analysis required by law; 3) added \$26,000 for the Parks, Trails and Recreation Commission for a Trails Survey and to fund an analysis of Park Impact fees; 4) carried forward \$42,000 of parks and trails maintenance to pay for reconstruction of the Walter Costa Trail, which was imbedded in 2006/07 and carried forward; and 5) added \$35,000 to storm water pollution for a sidewalk sweeper.

She noted there were items that came to her attention after the publication of this budget:

1. The City is planning to install the new parking meters in January. Staff previously received a bid from the Duncan Company, and unfortunately, they no longer produce the dual head meters, and we must buy single head meters and a converter which is \$5,000 more than the original quote. The total for all meters would be \$36,250, which needs to be budgeted in Fund 32 (Parking); and
2. There were vehicle replacements for the Police Department. An accident occurred with one car, they will purchase a car from the County which will be used for a K-9 car which is the Chief's car, and they will replace the Chief's car with a Toyota hybrid. Once all insurance money is netted from the accident, they believe \$40,000 will be needed to cover the cost of the replacements, which will be taken from the Sinking Fund for replacement vehicles with no impact to the general fund.
3. There were a couple of personnel changes related to the Library. They increased administrative support from ½ FTE to 1 FTE.
4. They re-assigned the Engineering Technician full time to the Library project as a construction inspector. They will not backfill the position at this time. Therefore, there are some savings in a few general fund accounts as a result, and the expense should be absorbed in the Library budget due to the original position being budgeted as a contract position;
5. They also promoted the part-time Parks and Recreation Accounting Clerk to the Accounting Clerk II classification.

Regarding the reserve standard for 2007/08, staff projects the City will maintain a cash balance of \$12.3 million. \$1.8 million is in excess of the Council's target of 50%. This is in addition of the \$590,000 already put into the Sinking Fund in June and \$600,000 of it was released back from the Sinking Fund. Last year, additional monies were reserved in the Sinking Fund for the PMP to cover potential cost escalations which did not materialize and some were able to be covered from savings on prior projects. Therefore, that money was released back to the general fund reserve, leaving \$1.8 million above the current reserve standard available to the general fund.

City Manager Falk thanked Ms. Robinson for her preparation of the budget, noting she does the work all by herself without assistance from staff. Mayor Anderson thanked her on behalf of the entire Council.

Vice Mayor Tatzin referred to page 26 and said at a meeting last week, they amended the City Manager's salary, and Ms. Robinson noted the amendment.

PUBLIC COMMENTS:

MARIA MORD asked that the City spend their money on repair of failed roads, said she lives on Camino Colorados, she worked on the Measure C campaign, contributed time and money, thinks the City needs to change their priority on which roads are repaired and asked to repair first the failed residential roads. She said she and her neighbors actually drive up Arroyo and avoid their own street due to the many potholes. She wanted all failed roads moved to the top of the list, felt the City's infrastructure is the largest asset and asked that roads be repaired.

Mayor Anderson thanked Ms. Mord for her work on the campaign.

GUY ATWOOD referred to the Holmes matter discussed earlier and said he was on the Planning Commission in 1976 and approved that application. He hoped the Council received and read the letter from the Lafayette Homeowners Council, felt the roads meeting was very productive last week, said he wants to keep the ball rolling, requested the Council begin addressing the issues in the letter as soon as possible and making commitments. He felt a long-term plan would be much more successful to implement and felt a big dent could be made in addressing the problem. He acknowledged that not all work could be done in a couple of years, believed the City could make a major impact on addressing the issue of fairness and equity and that at some time the City would need to proceed on a bond measure, but it would not take raising near the amount of money required in the past.

GEORGE BURTT, Lafayette Homeowners Council and the Acalanes Valley Homeowners Association supported the letter but did not understand the City's timing. This is their first opportunity to discuss next year's budget and it is an opportunity for the Council to make adjustments as needed and create a living document the Council and citizens can live with. They understand the current Council cannot bind future administrations, but documents give them a hope for achieving a goal within some reasonable amount of time. He felt 8 years could be reasonable, asked to begin the process and felt any discussions today was preferable.

Vice Mayor Tatzin recommended adopting the budget as presented with modifications noted. He said the Mayor was not able to attend the roads meeting last week, but the roads did not pave themselves while he was gone. They identified a variety of City resources available to contribute to unmet needs the City has which include the budget surplus, repayment of the Debt the Redevelopment Agency owes to the General Fund, monies coming in from Palos Colorados and other sources. He felt there was enough money there to maintain a \$5 million CIP level for between two and four years. As Councilmember Anduri had pointed out, we may not want to commit to all of this because if this is done and the City needs to go out for a measure and has very few people who live on failed roads, it would be difficult to generate the needed vote. He felt the City will enter into the 2008/2009 budget cycle with a fair amount money and expectations and there is an opportunity to do what part of Measure C would have done in the past.

Councilmember Anduri supported approval of the budget. In terms of the process going forward, assuming the Council approves the 2008 calendar, the goal-setting workshop will be held February 4, 2008. This evening will follow up on discussions held last week with the roads task force and in the past five years and said virtually all available City funds have been allocated to the roads. The Sun actually carried an article that states, "Lafayette to Start on Roads," but he said they have worked on roads with every penny it has for the last 13 years. Now it appears there will be more money and the Council will definitely want to look at it on February 4th as to how much it can allocate in a responsible way and they will be looking to the City Engineer for recommendations. However, one must look at the history the Council has in applying money available to roads. There are also others who want to do things with funds, such as increased police protection, increased library services, and he thinks the right thing to do is to spend all money available to take care of needs. He expressed the political concern that as the

City continues to fix roads, it loses the voter base. But, he still feels it is the right thing to do even though this is a risk. But, it would be wiser to look at the year ahead as well as 8 years ahead at other needs the City will have, think about the money available, allocate it and discuss what the City might have to do for alternate revenue sources which could be a tax. He felt it was wise to look at it in advance, lay it out, identify all community needs and come up with a program that the entire Council can support. This may involve alternate revenue sources or taxes and he felt it would take a comprehensive approach in moving forward.

Councilmember Andersson agreed. He believes there has been a history of not putting all available dollars into the roads and felt this should still continue. He had hoped that if the parcel tax did pass it would have given the City the opportunity to get rid of its 800 pound gorilla on its shoulder and actually be able to look at other things that would be beneficial for the City that it has never been able to do. What the roads meeting did is generate an alternate vision of how to get there. By cutting dramatically into the need and using current funds, a good portion of money is available to work on the roads. He shares the concerns about the fact that in fixing the roads, the City will obtain fewer votes. But, on the other hand, showing the willingness to address the problem and come back with a tax that requires less of a commitment would have some advantages. Between the last election and the next attempt to raise revenues, people will see that the Council has looked at other sources and has done its best to minimize its impact to other revenues. He believes this is the approach to take, believes the Council must look at the full period in which we will need to complete the effort and include roads and other things as well on an on-going basis.

Councilmember Anduri said what might not have come across in the newspaper article is that all of these sources that can be called "new sources" have hit the radar screen since the vote. The City was not aware of the State bond funds available, the general fund surplus, and said the Palos Colorados settlement and the bulk of the funds were not available. Those funds on the list for the roads task force meeting last week will be reviewed. The parking fund, city office fund and reducing the general fund reserve from 50% to 30% were there and they will be reviewed again.

Mayor Anderson said he was sorry he missed the meeting and asked Ms. Robinson to review the budget cycle process for the next year in order for the public to get a sense of timing.

Ms. Robinson said the process will start in February at the goal setting meeting at which point the Council will lay out the goals for the next fiscal year. She will then start working on the budget in the March/April time period, staff will present and hold a budget workshop in the beginning of June and the proposed budget is then approved in advance which is typically in the middle of June. She said Mayor Anderson requested this year for staff to look at the budget differently and take a more holistic approach. She and the City Manager have discussed what format might occur, they feel it would be useful to hold a workshop specifically devoted to the budget where everything is on the table and recommend it occur after the February goal setting meeting so everyone will have the goals and what needs to be accomplished.

Councilmember Anduri noted the goal setting meeting is scheduled for February 4 and the budget meeting is May 27th. Ms. Robinson staff would probably want to schedule

something much earlier, allow for community input and possibly hold a longer meeting on an off-Council night, which she felt could occur in March or April.

City Manager Falk said staff reserved February 4 for the goal-setting meeting. In the last few years it took more than 1 or 2 hours and he questioned if there would be benefit in incorporating the goal-setting meeting into the January 28 meeting and then holding a budget workshop on February 4th. Mayor Anderson said from comments made in previous meetings, they would need March or April to do a full review of the budget and he preferred sticking to this. He felt the February 4 meeting has been a traditional meeting and he suggested a workshop follow where people can see where dollars are. City Manager Falk agreed to return with date alternatives.

Councilmember Anduri questioned why couldn't the February 4 meeting include what funds are available. He said their discussions of the goal-setting meeting have included primarily tasks and costs and he felt the Council would want to start the discussion earlier. If a comprehensive plan is reviewed, it will take more than that meeting and the next meeting could thereafter be scheduled.

Mayor Anderson said his sense is that March or April was a reasonable timeframe for an in-depth review of the budget and he would like to hold it in a workshop session. If this could happen sooner, that would be great. Ms. Robinson suggested that she and the City Manager meet with Mayor Anderson and get a better idea of the expectation. They will not have any new information in terms of the budget by February 4th. Estimates do change slightly but if what the Council is looking for are opportunities to match revenues and expenses in the general fund, historically staff can identify what those things cost.

Mayor Anderson agreed and said this would allow for an opportunity to see where the money is going in a bare bones way so people can understand nothing is hidden.

ACTION: It was M/S/C (Tatzin/Anduri) to adopt the Final Municipal Budget/Workplan for Fiscal Year 2007/2008, as amended, and adopt Resolution 2007-50. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

Convene Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Anduri) to convene the Redevelopment Agency Meeting. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

3. Adopting the Final Redevelopment Agency Budget/Workplan for Fiscal Year 2007/2008

Recommendation: Receive the Final Redevelopment Agency Budget/Workplan for Fiscal Year 2007/2008 and adopt Resolution R2007-07.

Vice Chair Tatzin recognized a lot of the work the Redevelopment Agency Budget and Workplan focuses on the Downtown Strategy plan, construction of the Library and issuing a new bond, and he recommended adopting the Budget and Workplan.

ACTION: It was M/S/C (Tatzin/Anduri) to adopt the Final Redevelopment Agency Budget/Workplan for Fiscal Year 2007/2009 and adopt Resolution R2007-07. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

B. Mala Subramanian, City Attorney

Lafayette Library Learning Center Use Agreement, Funding Agreement and Loan Agreement

Recommendation: Discuss and provide feedback to staff regarding draft agreements.

Vice Chair Tatzin said he is an Ex-officio member of the Lafayette Library Learning Center Foundation and as a member he does not vote. While he will participate in the discussion, he will not vote on the items as a Councilmember when they come before the Council in the future.

Agency Attorney Subramanian said there are three draft agreements which have been presented to the Foundation. Staff is currently looking for comments and questions and anticipates bringing them back on the next agenda. There are revised agreements she e-mailed were also before the Agency with slight modifications. She said the three agreements are 1) a funding agreement which is between the City and Foundation; 2) a use agreement between the City and Foundation; and 3) a loan agreement between the Redevelopment Agency and Foundation.

She described the agreements as follows:

Funding Agreement: The funding agreement is 10 year agreement, it provides that both the City and Foundation will jointly prepare and approve a budget for library costs and expenses. When the City needs funds, it will make a request for payment to the Foundation. The Foundation will review the request and make a determination with 90 days to pay the request. If determination is made to not pay the request, the Foundation needs to reports this to the City within 10 days. If it cannot pay the request due to insufficient funds, it would pay the maximum amount it could pay. The City is required to keep the money in an interest-bearing account and use the money as agreed for as part of the budget.

Use Agreement: The use agreement is a 10 year agreement. The City is responsible for library maintenance, required to lease space in the Library to the Foundation, the County, the Friends, the Historical Society and the Arts and Science Foundation. The Foundation is required to manage the room rentals in the Community Hall and Arts and Science classrooms, required to provide an annual plan for the Consortium which will be reviewed and approved by the City, and only incur costs and expenses that support the Library and Consortium programs.

Loan Agreement: The loan agreement is between the Redevelopment Agency and the Foundation. There are still some items to work out. The loan is provided for at \$7.5 million, it will compound annual interest, the rate has not been set as of yet, a payment of \$4 million will occur if Agency issues repayment bonds. Hopefully, the \$4 million payment will include both interest and principle. The loan agreement will be subordinate to any Agency bonds issued even if issued after the loan agreement is entered into. It will also be subordinate to any existing indebtedness, such as any loan between the City and the Agency. Any blanks will also be filled in shortly.

She reviewed revisions as follows:

Recitals D and E of the Funding Agreement reflect the obligations of the County pursuant to a joint agreement entered into in 2004 which specifies the level of funding the County will be providing to match the level that is currently provided in the existing library. It will also increase on an annual basis per the CPI.

The City will also pay into this fund for operations and maintenance in a similar fashion it has been paying for the existing library which will also increase annually based on the CPI.

Both the funding and use agreement also have a revised indemnification provision regarding the Foundation. Originally the Foundation mutually indemnified the City. The revised agreement provides that the Foundation will indemnify the City only for its gross negligence.

Chair Anderson said in both the funding and use agreement, the term is 10 years and renewable for 5 year periods. He confirmed with the Agency Attorney that either party could provide notice by the 8th year to extend it, and if any party wanted to extend it an additional 5 years, either party would need to be notified.

Agencymember Andersson referred to the use agreement, the previous Section 2.1.7 regarding the City's right to enter the Property, and he asked why this was removed. Agency Attorney Subramanian said it was thought this section would be better placed in the actual lease agreement as opposed to the use agreement.

Chair Anderson questioned Section 2.1.3, of the Use Agreement, Responsibilities. He suggested calling out the actual rooms when referring to the actual spaces so there is no confusion about their location(s). Vice Mayor Tatzin felt this could also be done in the lease agreements and attach an exhibit, and noted that subsections 2.1.3.1 through 2.1.3.4 all refer to parties that are not part of the agreement. Agency Attorney Subramanian said more clarity could be provided and agreed it would be definitely clear in the individual lease agreements.

Chair Anderson referred to Section 2.2.2, said there is a reference to City-approved room rental policy and he questioned what this was. Agency Attorney Subramanian said there is none and one will be developed to conform to the City's policy. Vice Chair Tatzin noted there is a room rental policy for the Manzanita Room which the Council approved, and similarly, if someone wanted to serve the Community Hall, there is a guideline the Foundation can use.

Chair Anderson referred to page 4, Section 4.1.1(a), "Failure to maintain the Library at a level required to attract patrons and events", and he felt this was subjective. Agency Attorney Subramanian agreed to develop some quantifiable language.

Chair Anderson referred to 4.2.1(a), there is default if the Foundation is unable to manage its responsibilities, and he questioned the word, "manage" and suggested it be replaced with the word, "achieve". Agency Attorney Subramanian agreed to change the word to "achieve."

Chair Anderson questioned the Library hours, and Executive Director Falk said the current library is open 39-40 hours a week. In order to be open the same hours, it would require an additional staff member, which would be an increment of approximately

\$150,000 extra. Meanwhile, the fundraising group is seeking to raise an additional several million dollars and if all goes according to plan, there is a strategy in place that would use the combination of the raised money and interest generated to keep the Library open at 60 hours per week; 9:00am to 9:00pm Monday through Thursday, and 9:00am to 5:00pm Friday and Saturday. This is contingent on Phase II raising \$5 million.

Vice Chair Tatzin said it is also contingent upon execution of the three agreements. He said the actual proposed hours were at 58. Executive Director Falk said the plan is to open up the Library for 40 hours initially with the hope that if Phase II is successful, it would increase to the 58-hour mark. Vice Chair Tatzin said if the agreements are executed and the Foundation continues to raise money after the initial push, and the County and City provides the amount of money they have committed with inflation, the library will be able to operate for 25 years.

PUBLIC COMMENTS:

JIM CYNHN, Treasurer of Foundation said they have about 6 volunteers and hope to be in a position in the next day or so to review the revisions. They will then have an attorney conduct a high level review of it. They will then have the full Board of Trustees review and approve it in order to be in sync with what the City is doing it as a Redevelopment Agency and City Council. There is one thing they need is conduct the review of projections. They have looked at an independent CPA firm and he suggested splitting the cost of this. One of their trustees in a large bank has a group of analysts who could also review it, and he felt it was in their mutual best interest to do this because the numbers under review revolve around those projections. We know things will change over time but it is best to understand the assumptions and the model properly works. On the fundraising side, they clearly are committed to getting to the 58 or more hours. Therefore, he asked for mutual agreement to support the cost of the CPA work.

Vice Chair Tatzin said he had an email conversation with Executive Director Falk regarding the review of the model and agrees it should be done, and there is an item in the Redevelopment Agency budget to pay for this under the Executive Director's authority.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Anduri) to adjourn the Redevelopment Agency. Vote: 4-0-1 Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent:Federighi).

9. PUBLIC HEARINGS - None

10. CONSENT CALENDAR

Convene jointly as the Redevelopment Agency and City Council

ACTION: It was M/S/C (Tatzin/Anduri) to jointly convene the Redevelopment Agency and City Council. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson: Noes: None; Absent:Federighi).

Councilmember Andersson requested removal of Item 10.C and Councilmember Anduri requested removal of Item 10.Q.

ACTION: It was M/S/C (Tatzin/Andersson) to approve remaining Items 10.A, B, D, E, F, G, H, I, J, K, L, M, N, O, P, and R. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

A. City Council Minutes

November 26, 2007

Recommendation: Approve.

B. Resolution 2007-048 Reappointing members of the Bicycle Pedestrian Advisory Committee, Circulation Commission, Code Enforcement Appeals Board, Crime Prevention Commission, Design Review Commission, Emergency Preparedness Commission, Parks, Trails & Recreation Commission, Planning Commission, Senior Services Commission and Youth Commission

Recommendation: Adopt Resolution 2007-048.

D. Agreement for Installation and Maintenance of Existing and New Landscaping between Kasra and Salab Amirdelfan and the City of Lafayette, located at 4110 El Nido Ranch Road. APN 249-140-015

Recommendation: Accept agreement and authorize City Clerk to record.

E. Agreement for Installation and Maintenance of Existing and New Landscaping between Jim & Gayle Burleigh and the City of Lafayette, located at 619 Burton Drive. APN 237-303-001

Recommendation: Accept agreement and authorize City Clerk to record.

F. Letter dated November 20, 2007 from Carol Lu Zischke resigning from the Senior Services Commission

Recommendation: Accept with regret and schedule recognition.

G. Professional Services Agreement for updating and refining the City's Parkland Dedication and Park Facilities Fee programs

Recommendation: Authorize Mayor to sign the Professional Services Agreement with Seifel Consulting, Inc.

H. Renew the East Bay Municipal Utility District Lafayette Trail License Agreement for 10 years, R/W-X 1089

Recommendation: Authorize the City Manager to sign the Lafayette Trail License Agreement.

I. Accept the Emergency Creek Bank Stabilization Project Number 014-9665 as complete and direct staff to file a Notice of Completion

Recommendation: Accept project as complete and authorize staff to file a Notice of Completion and release contractor's final retention.

J. Agreement for Installation and Maintenance of Existing and New Landscaping between Eric and Stephanie Stephan and the City of Lafayette, located at 3180 Rohrer Drive. APN 237-191-004

Recommendation: Accept agreement and authorize the City Clerk to record.

- K. **Completion of Subdivision MS 504-04 at 790 Los Palos Manor**
Recommendation: Authorize staff to file a Notice of Completion and release bonds in accordance with Contra Costa County Code §94-4.406 and §94-4.408.
- L. **Withdrawal of request for wooden fence and landscaping encroachment into the City's right-of-way along El Curtola Boulevard at 2 Greene Place**
Recommendation: Receive and file.
- M. **Notification of intent to submit TDA Article 3 Grant Application for Stanley Blvd. sidewalk and bikeway improvements.**
Recommendation: Authorize submittal of TDA grant application.
- N. **Accept the Community Center Rink Project No. 012-9155 as complete and direct staff to file a Notice of Completion.**
Recommendation: Accept project as complete and authorize staff to file a Notice of Completion and release contractor's retention.
- O. **Consideration of City participation in the Local Update of Census Addresses (LUCA) program of the 2010 Decennial Census.**
Recommendation: Authorize City participation in the LUCA program under Option 3.
- P. **Summary of City Investments**
Recommendation: Receive and file.
- R. **Procurement of Substitute Access Easements Pertaining to Redevelopment Agency v. Lemana**
Recommendation: Authorize the expenditure of \$15,000 for the procurement of substitute access easements from EBMUD to resolve the pending litigation.

ITEMS DISCUSSED:

- C. **Resolution 2007-049 Amending the Rules of Proceedings for the Conduct of Council Meetings**
Recommendation: Adopt Resolution 2007-049.

Councilmember Anderson said there have been specific rules about voting procedures which was replaced by, "Rule shall be amended by resolution." He asked if the specific voting procedures were removed because the resolution implies a particular voting procedure.

City Attorney Subramanian said they did not know the rationale behind having the actual higher threshold, so they proposed it be amended by resolution. A resolution requires a majority of the quorum under the Government Code, so staff felt if it was kept simple and if the law changed, they would need to return and revise the resolution.

Vice Mayor Tatzin said he feels the reason was that they were also not thinking about when the State overrides us. For example, there are only some things the Council can do by simple majority vote and we can only amend that rule by the same simple majority vote, but state law may have precluded us doing anything other than that anyway, like adding an emergency item.

Mayor Anderson suggested adopting the current recommendation. He also referred to Item 2 of the regular meeting agenda and asked that "Announcements from Closed Session" be added in the future after "Adoption of Agenda". City Clerk Robbins agreed to the amendment and said she would add the verbiage to all future agendas.

ACTION: It was M/S/C (Tatzin/Anderson) to Adopt Resolution 2007-049, as amended by adding Report from Closed Session" after "Adoption of Agenda". Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

Q. Request to approve the Promissory Note, Predevelopment Loan Agreement and Predevelopment Deed of Trust between the Lafayette Redevelopment Agency and Eden Housing, Inc.

Recommendation: Approve the Promissory Note, Predevelopment Loan Agreement and Predevelopment Deed of Trust between the Lafayette Redevelopment Agency and Eden Housing, Inc.

Planning and Building Services Manager Niroop Srivatsa said Councilmember Anduri, representing the Senior Housing Task Force, asked the item be removed in order to provide an update on Eden Housing's efforts to purchase the Butler/Conti property and alert the Council to the fact that Eden Housing will require additional financial assistance from the City, which was presented at the joint meeting.

In the audience are representatives from Eden Housing and Diana Elrod, the City's Housing consultant. Ms. Srivatsa said Eden has prepared a preliminary budget for the project. It will cost \$22 million of which \$20.6 million will be funded by a variety of sources, as well as the \$2.2 million the City has committed to the project. There is a funding gap of \$1.4 million, primarily due to the high cost of land. It is costing Eden Housing about \$5.2 million to acquire the property. Eden Housing met with the Senior Housing Task Force last week to discuss options to bridge the gap and staff will be bringing the Council a recommendation at its first meeting in January and there will be additional discussions taking place on funding the project at that time.

Ms. Srivatsa said she spoke to the Mayor today and he asked whether the matter could be deferred to January so everything could be discussed at once; however, staff recommends that the Council approve the loan agreement because it is divided into two parts—First, the pre-development loan or budget of approximately \$500,000 of which Eden has already expended partially to hire an architect. They have not authorized the preparation of the survey or environmental assessment until Eden receives approval by the Agency and they hope to get started on these tasks immediately.

Secondly, Phase II of the loan agreement states that only if Eden Housing successfully completes Phase I will the City commit the remainder to the project. Therefore, staff is recommending the Council approve the loan agreement which the Agency had actually approved back in May of 2007, and that staff will return the other options to bridge the gap in January.

PUBLIC COMMENTS:

WOODY KARP, Eden Housing, said he was available for questions regarding the efforts on their part to acquire the land. He felt the City Attorney could best explain questions

raised at the last hearing regarding the pre-development loan agreement and the apparent conflict.

Councilmember Andersson said previously, Councilmember Tatzin questioned whether it was possible for Eden to consider acquiring the adjoining property as well, and perhaps using the back half of the two properties, with commercial development in the front. Mr. Karp said they did review this, spoke with the adjacent property owner about his long term vision; he is putting his property on the market and has been approached by other parties. He said this is not something Eden Housing would be in a position to acquire, and from the existing budget gap, acquiring additional parcels would make it much more difficult. The question was whether or not they could do a land swap that would allow them to build a project on the rear portion and commercial property developed on the Mt. Diablo Boulevard portion. While this is a very interesting option, unfortunately to pursue this would mean to forego the acquisition of the Conti/Butler property as they try to do the land swap agreement. This would put them in serious jeopardy of having the funding application approved by the County for HOME and CDBG funding. He noted the application was submitted last month, the County will be making a determination in January which is \$3 million of their current budget and is critical to the overall project succeeding. Therefore, the short answer is that they do not think that in order to run with the current schedule, it would be viable to do a land swap.

ACTION: It was M/S/C (Anduri/Tatzin) that Chair Anderson be authorized to execute the pre-development loan agreement Eden Housing, Approve the Promissory Note, Predevelopment Loan Agreement and Predevelopment Deed of Trust between the Lafayette Redevelopment Agency and Eden Housing, Inc. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

11. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Councilmember Anduri reported on the roads task force meeting and distributed a summary of information discussed. He said the document takes numbers Ms. Robinson provided and adopts the way he and Vice Mayor Tatzin organized them to show funds most available for roads which are already committed to the next source or uncommitted, to available now, to available but committed to other uses, and then potentially available and the speculative category. He noted there will be more work done on it. He also wanted to set a time for the next meeting and he confirmed with Mr. Coe, he and Vice Mayor Tatzin were all available Tuesday, January 22, 2008 and said the meeting would be noticed to the public.

Councilmember Andersson said two meetings ago there was a discussion of the Chamber of Commerce's offer to help look into alternative funding of the core assessment district. He volunteered to meet with the Chamber of Commerce, said he met with the Chamber's Executive Director, and questioned if a subcommittee should be

set up. Mayor Anderson agreed a subcommittee was needed and agreed to join in with him in meetings and thereafter, report back out.

B. Mike Anderson, Mayor

1. 2008 Council/Commission Meeting Calendar

Recommendation: Adopt 2008 Council/Commission Meeting Calendar, as amended.

Mayor Anderson requested scheduling the Annual Commission Breakfast and confirmed the Council was available on October 25, 2008, which will be added to the Meeting Calendar.

ACTION: It was M/S/C (Tatzin/Anduri) to adopt the 2008 Council/Commission Meeting Calendar, as amended. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

2. Employee Holiday Incentive Program

Recommendation: Discuss and direct staff.

Vice Mayor Tatzin thanked staff for their great work, said the City is more concerned with its financial situation in the upcoming year than 2007 and believe the additional paid holiday will be appreciated by employees, as well as the \$50,000 (City employees) managed by the City Manager and \$5,000 (City Manager) incentive programs, which are based upon merit.

ACTION: It was M/S/C (Tatzin/Anduri) to adopt an Employee Holiday Incentive Program for \$50,000 (City employees) and \$5,000 (City Manager) and grant December 31, 2007 as an additional paid City employee holiday. Vote: 4-0-1 (Ayes: Anderson Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

12. WRITTEN COMMUNICATIONS – (Heard as Items 6.B and 6.C)

13. ADJOURNMENT

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the meeting at 9:44 p.m. to January 14, 2008. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Anduri, Andersson; Noes: None; Absent: Federighi).

APPROVED:

Mike Anderson, Mayor

ATTEST:

Joanne Robbins, City Clerk